

In the High Court of Judicature at Madras

Dated : 25.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.10463 of 2018 & WMP.No.12413 of 2018

S.Zahir Hussain

...Petitioner

Vs

1.The Commissioner of Income Tax,
Non Corporate Ward 9(5),
Aayakar Bhavan, Office of the
Income Tax, Chennai-34.

2.The Income Tax Officer, Non
Corporate Ward 9(5), Aayakar
Bhavan, Office of the Income Tax,
Chennai-34.

3.The Branch Manager, M/s.Vijaya
Bank, PB.No.3025, No.123, Dugar
Towers, Egmore, Chennai-8.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent in the proceedings initiated under Section 226(3) of the Income Tax Act P.A.No.AAAPH5594G dated 26.3.2018, quash the same as illegal and direct the respondents to lift the attachment made on the amount due to the Petitioner from the third Respondent and to consider and dispose of the petitioner's appeal/representation dated 31.3.2018 filed before the first respondent.

For Petitioner : Ms.S.Deepika

For Respondents 1 & 2: Mrs.Hema Muralikrishnan, SSC

ORDER

Mrs.Hema Muralikrishnan, learned Senior Standing Counsel accepts notice for respondents 1 and 2. Heard both. In the light of the order, which this Court proposes to pass, notice to the third respondent is dispensed with and the writ petition itself is taken up for final disposal.

2. The petitioner is aggrieved by a notice issued by the second respondent - the Assessing Officer under Section 226(3) of the Income Tax Act, 1961 directing the petitioner's bankers

to remit a sum of Rs.12,44,260/- towards the income tax dues payable by the petitioner.

3. As against the order of assessment dated 30.12.2016, the petitioner preferred an appeal before the Commissioner of Income Tax (Appeals-10), Chennai. Before the Appellate Authority, the petitioner is stated to have produced voluminous documents and the Appellate Authority also, on prima facie satisfaction that those documents were not verified by the Assessing Officer, by proceedings dated 29.1.2018, issued a direction to the second respondent to verify the documents submitted by the petitioner after giving an opportunity to the assessee, examine the evidence and submit a report to the Appellate Authority with the comments of the second respondent after verification on or before 16.3.2018.

4. Record of the proceedings shows that this direction has not been complied with, as no report has been submitted by the second respondent to the Appellate Authority as directed. However, the impugned notice dated 26.3.2018 has been issued. Considering the facts and circumstances of the case, the second respondent should not precipitate the matter nor proceed against the petitioner under Section 226(3) of the said Act by issuing the notice to their bankers. The Appellate Authority, having directed the second respondent to verify the documents and submit a report along with his comments on or before a particular date, such a direction shall be scrupulously complied with by the second respondent.

5. For the above reasons, the writ petition is disposed of by directing the second respondent to keep the impugned notice in abeyance till the Appellate Authority takes a decision on the petitioner's stay petition in the appeal petition in ITA No.183/CIT(a)-10/2016-17. For effective compliance of the direction issued by the Appellate Authority, the second respondent is directed to issue notice to the petitioner fixing a date for personal hearing and on the date fixed for personal hearing, the petitioner shall appear either in person or through authorized representative and furnish all records that may be required. No costs. Consequently, connected WMP is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Income Tax, Non Corporate Ward 9(5),
Aayakar Bhavan, Office of the Income Tax, Chennai-34.

2.The Income Tax Officer, Non Corporate Ward 9(5), Aayakar
Bhavan, Office of the Income Tax, Chennai-34.

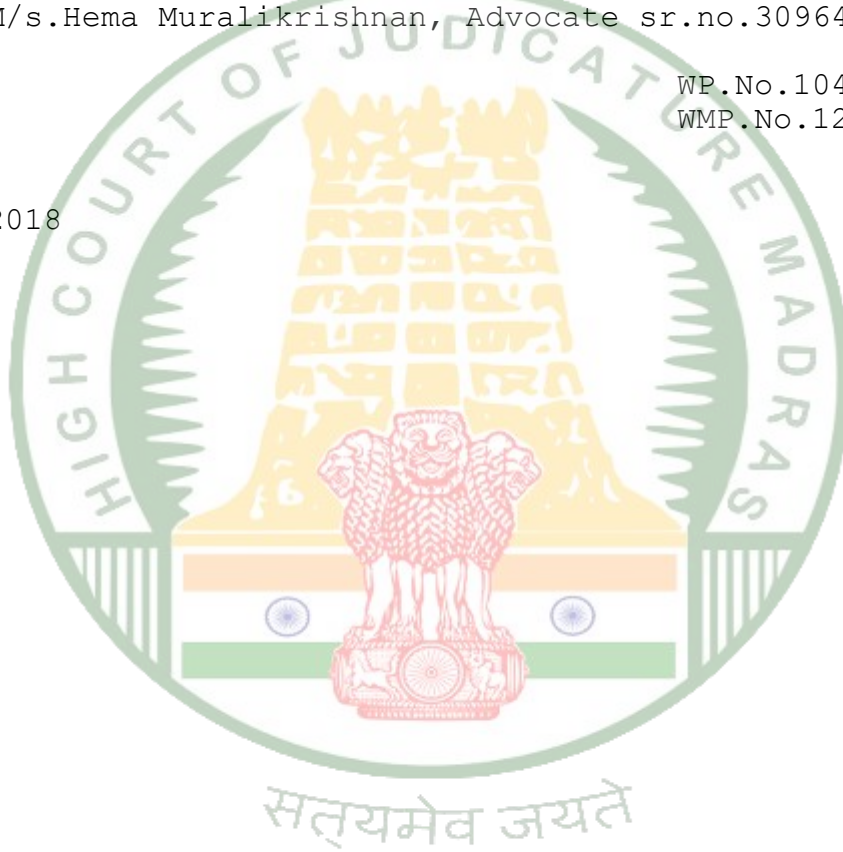
3.The Branch Manager, M/s.Vijaya Bank, PB.No.3025, No.123, Dugar
Towers, Egmore, Chennai-8.

+lcc to Mr.D.Parvethan, Advocate sr.no.30639

+lcc to M/s.Hema Muralikrishnan, Advocate sr.no.30964

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gmr(co)
nr 16/05/2018



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